

REMARKS

Claims 1-20 and 23-28 are pending. Claims 1-20 and 23-28 were rejected in the Office Action dated July 2, 2009. Reconsideration of all rejected claims is requested in light of the arguments and amendments presented here.

Claim Rejections Under 35 U.S.C. §103

Claims 1-4, 9-13, 15-17, 19-20, 23, 27-28 were rejected under 35 U.S.C. §103(a) as being unpatentable over European Patent Publication No. EP1453021 to Loose ("Loose"). However, Loose shows a publication date of September 1, 2004, which is after the filing date of the present application, August 5, 2003. Therefore, Loose is not believed to be prior art to the present application. 35 U.S.C. §103(a) states:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in **section 102** of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The relevant portions of 35 USC 102 state (with emphasis added):

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, or...

(e) the invention was described in - (1) an application for patent, published under **section 122(b)**, by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in **section 351(a)** shall have the

effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under **Article 21(2)** of such treaty in the English language

Loose was not published before the present application was filed, and thus cannot be considered as prior art under 35 USC 102(a) or (b). Furthermore, Loose is not an application for patent published under section 122(b), filed in the United States, or an international application filed under section 351(a), designating the United States, and published under Article 21(2). Thus, Loose cannot be considered as prior art under 35 USC 102(e). It is not believed that Loose can be considered as prior art under any other statutory section either.

The MPEP provides guidance on determining how to use references “All foreign patents, published applications, and any other published derivative material containing portions or summaries of the contents of published or unpublished patents (e.g. abstracts) which have been disseminated to the public are available to U.S. examiners. See MPEP 901.06(a), paragraphs I.C. and IV.C. In general, a foreign patent, the contents of its application, or segments of its contents should not be cited as a reference until its date of patenting or publication can be confirmed by an examiner’s review of a copy of the document.” MPEP 901.05, emphasis added. See also MPEP 2127 and 2128.

With respect to using the filing date of a foreign published patent application, MPEP 2136.03 I states, “35 USC 102(e) is explicitly limited to certain references ‘filed in the United States before the invention thereof by the applicant’ (emphasis added).” Loose is entitled “European Patent Application” (page 1, item 12, emphasis added) and is not an application filed in the United States. MPEP 2136.03 II describes an alternative. “If the potential reference resulted from, or claimed the benefit of, an international application, the following must be determined: (A) If the international application meets the following three conditions: (1) an international filing date on or after November 29, 2000; (2) designated the United States; and (3) published under PCT Article 21(2). Loose does not designate the United States (see page 1, item 84) and does not appear to be published under PCT Article 21(2). Thus, there appears to be no basis for considering Loose as prior art as of its filing date. Furthermore, it is noted that Loose shows a filing date of February 13, 2004, which is also after the filing date of the present application.

Claims 5-8, 14, 18, 24-26 were rejected under 35 U.S.C. §103(a) as being unpatentable

over Loose in view of European Patent Publication No. EP1439506 to Pryzbe ("Pryzbe"). However, Pryzbe shows a publication date of July 21, 2004, which is after the filing date of the present application, August 5, 2003. Therefore, as discussed with respect to Loose, Pryzbe cannot be considered prior art under 35 USC 102(a) or (b). Furthermore, Pryzbe cannot be considered prior art under 35 USC 102(e) either because it is not an application filed in the United States (see above).

Furthermore, it is noted that several claim features were not found by the Examiner in the references, but instead it was asserted that their existence could be implied. "It can be implied that the interface may be any suitable interface such as an event sequencer," page 3. However, it is not seen how Loose implies that interface 32 is a programmable logic device of claim 1 or an event sequencer of claim 2. Regardless of what can be implied, the question is whether Loose disclosed the features of claim 1 for which it was cited. Loose does not appear to have disclosed a programmable logic device, either explicitly or implicitly.

CONCLUSION

Accordingly, it is believed that this application is now in condition for allowance and an early indication of its allowance is solicited. However, if the Examiner has any further matters that need to be resolved, a telephone call to the undersigned at 510-663-1100 would be appreciated.

Respectfully submitted,
Weaver Austin Villeneuve & Sampson LLP

/Peter Gallagher/

Peter A. Gallagher
Reg. No. 47,584

P.O. Box 70250
Oakland, CA 94612-0250
510-663-1100